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Poly-Wood, LLC

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK DIVISION**

POLY-WOOD, LLC

*Plaintiff,*

v.

DISCOUNT FURNITURE PLACE, INC.

*Defendant.*

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Civil Action No. 2:23-cv-1360

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Poly-Wood, LLC (“Poly-Wood”) by their attorneys, serve and file this Complaint for trademark infringement and Lanham Act Violations and Request for Jury Trial, complaining of Discount Furniture Place, Inc. (“Discount Furniture”) and would respectfully show as follows:

### **Nature of the Action**

1. Poly-Wood and Discount Furniture are competing manufacturers and sellers of outdoor furniture and components. Poly-Wood sells plastic outdoor furniture and plastic lumber for outdoor furniture and decking under its well-known and highly successful POLYWOOD® trademark. Discount Furniture is using the mark POLYWOOD to advertise and offer for sale competing outdoor furniture, claiming that its goods are POLYWOOD furniture.

### **Parties**

2. Plaintiff Poly-Wood, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 1001 W Brooklyn St., Syracuse, IN 46567-1433.

3. Upon information and belief, Defendant Discount Furniture Place, Inc. is a corporation organized and existing under the laws of the State of New Jersey, having a principal place of business at 1030 US Highway 46, Clifton, NJ 07013.

### **Jurisdiction and Venue**

4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 as this is a claim for violation of the Lanham Act pursuant to 15 U.S.C. §§ 1114 and 1125(a).

5. Defendant is subject to personal jurisdiction within New Jersey and this judicial district, as Defendant is operating in New Jersey and his place of business is in New Jersey. Venue as to Defendant is thus proper pursuant to 28 U.S.C. §1391(b).

### **Factual Background**

#### **Poly-Wood's POLY-WOOD® and POLYWOOD® Trademark and Background Facts**

6. Since at least 2002, Poly-Wood has continually promoted and offered its POLYWOOD® and POLY-WOOD® products in the field of outdoor furniture and plastic

lumber for outdoor furniture and decking, via a network of authorized dealers located around the country, and online from its website located at <https://www.polywood.com/>.

7. Poly-Wood has used the POLYWOOD® and POLY-WOOD® marks continuously, notoriously and extensively with respect to and in association with its products since at least 2002 and further has marked its materials with the appropriate “®” legend.

8. Poly-Wood has expended a substantial amount of money and effort in advertising and promoting its POLYWOOD® and POLY-WOOD® marks. Poly-Wood’s POLYWOOD® and POLY-WOOD® marks are well known and consumers have come to know, rely upon, and recognize the POLYWOOD® and POLY-WOOD® marks as identifying Poly-Wood’s products. As a result of Poly-Wood’s substantial promotional, advertising, publicity, and public relations activities, the POLYWOOD® and POLY-WOOD® marks have acquired substantial goodwill and is a valuable commercial asset.

9. Poly-Wood’s POLYWOOD® and POLY-WOOD® marks are distinctive and inherently distinctive, serving to identify and indicate the source of Poly-Wood’s products to the consuming public, and to distinguish Poly-Wood’s products from those of others.

10. Poly-Wood owns US Trademark Registration Nos. 3415190; 3590724; 3762282; and 4245624 for POLYWOOD and POLY-WOOD.

11. Copies of Poly-Wood’s trademark registration certificates are attached as Exhibit A.

12. Trademark Registration Nos. 3415190; 3590724; 3762282; and 4245624 are incontestable.

**Discount Furniture Actions:**

13. Discount Furniture makes and sells plastic outdoor furniture.

14. Discount Furniture is a competitor to Poly-Wood.

15. Discount Furniture claims to be selling POLYWOOD furniture, for example as illustrated on the Discount Furniture website at

<https://www.discountfurnitureplace.com/page/1/?s=polywood>.

16. Example pages from Discount Furniture's website showing its use of the POLYWOOD trademark are attached as Exhibit B.

17. On November 11, 2022, Poly-Wood sent Discount Furniture a cease and desist letter. A copy of the November 11, 2022 letter is attached as Exhibit C.

18. Discount Furniture did not respond to the November 11, 2022 letter, nor did it stop infringing the POLYWOOD® trademark.

19. On December 15, 2022, Poly-Wood sent Discount Furniture a follow-up email.

20. Discount Furniture did not respond to the December 15, 2022 email, nor did it stop infringing the POLYWOOD® trademark.

21. On January 11, 2023, Poly-Wood sent Discount Furniture a follow-up email.

22. Discount Furniture did not respond to the January 11, 2023 email, nor did it stop infringing the POLYWOOD® trademark.

23. On February 9, 2023, Poly-Wood sent Discount Furniture a follow-up email.

24. Discount Furniture did not respond to the February 9, 2023 email, nor did it stop infringing the POLYWOOD® trademark.

25. Discount Furniture continues to knowingly and intentionally infringe the POLYWOOD® trademark.

### **TRADEMARK INFRINGEMENT**

26. Poly-Wood incorporates by reference the averments contained in paragraphs 1 through 25.

27. The unauthorized use of the POLYWOOD® mark in Discount Furniture's advertising and to sell Discount Furniture's goods is likely to cause confusion or mistake or to deceive consumers into believing that Discount Furniture's unauthorized products advertised, promoted, and offered under the POLYWOOD® mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Poly-Wood.

28. Discount Furniture's advertising has a material effect on consumers' purchasing decisions.

29. Discount Furniture's advertising affects interstate commerce.

30. The acts of Defendant complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125 and the common law.

31. Defendant's trademark infringement is deliberate and willful. As a result, Poly-Wood has been injured and is entitled to receive the maximum damages allowable under the Lanham Act from and against Defendant.

### **Demand for Jury Trial**

Poly-Wood demands a jury trial on all issues so triable.

### **Prayer For Relief**

A. Enter judgment that the unauthorized use of the POLYWOOD® mark in Discount Furniture's commercial advertising, marketing, promotion and/or sales in the United States infringes Poly-Wood's POLYWOOD® mark.

B. Enter judgment that the unauthorized use of the POLYWOOD® mark in Discount Furniture's commercial advertising, marketing and/or promotion and sales in the United States constitutes and creates a likelihood of confusion, mistake or deception among relevant consumers and therefore constitutes unfair competition.

C. Enter judgment that Discount Furniture's infringement and unfair competition is willful.

D. Permanently enjoin Discount Furniture, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from using the POLYWOOD® trademark to advertise, offer for sale and/or sell any products or services, unless authorized by Poly-Wood.

E. Permanently enjoin Discount Furniture, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from engaging in any form of false, misleading and/or deceptive advertising of products or services using Poly-Wood's POLYWOOD® mark which are likely to cause or have caused confusion, mistake or deception of the public.

F. Award Poly-Wood actual damages in the form of: (1) Discount Furniture's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action, in accordance with 15 USC §1117.

G. Award Poly-Wood a sum above the amount found as actual damages up to three times the actual damages, in accordance with 15 USC §1117.

H. Find the case exceptional and award Poly-Wood its attorneys' fees and expenses associated with this action, in accordance with 15 USC §1117.

I. Grant all such other relief that the Court deems just.

Respectfully submitted,

By: s/ Gloria Tsui-Yip

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